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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLI

IN THE

Supreme Court of the United States

October Term, 1972.

72-108

ARCHIE PELTZMAN,

Petitioner,

against

AMERICAN RADIO ASSOCIATION, *et al.,*
Respondent.

Petition for Writ of Certiorari to the Court of Appeals of the State of New York.

ARCHIE PELTZMAN,
Petitioner Pro Se,
8725 16th Avenue,
Brooklyn, N. Y. 11214

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IN THE SUPREME COURT OF THE UNITED STATES
TERM, 1973

ARCHIE PELTZMAN,

PETITIONER,

- against -

AMERICAN RADIO ASSOCIATION AND ITS OFFICERS, INDIVIDUALLY AND IN THIER RESPECTIVE CAPACITIES, WILLIAM STEINBERG, PRESIDENT, BERNARD L. SMITH, SECRETARY - TREASURER, JOSEPH Y. RUBIN, TED BERMAN, HARVEY STRICHARZ, FLOYD HEPTING AS NATIONAL COUNCIL MEMBERS,

RESPONDENTS,

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS, STATE OF NEW YORK.

The petitioner, Archie Peltzman, prays that a writ of certiorari be issued to review a final decree of The Court Of Appeals, State of New York, entered on or about December 28, 1972, denying petitioner leave to appeal a judgment of The Appellate

Division First Department,which affirmed unanimously a decision of The Supreme Court,Special Term Of New York City,which dismissed for lack of jurisdiction a suit for damages against a maritime union,and its individual officers for causing the discharge of the petitioner from his permanent job aboard the S/S GREEN RIDGE.

OPINIONS BELOW

The opinion of Special Term Supreme Court of New York dismissing the complaint for lack of jurisdiction is attached as Appendix I dated January 20,I972,and is reported in 327 NYS 2d 505.

The order of Special Term,Supreme Court of New York denying motion to vacate decision of January 20,I972 is attached as Appendix 2.

JURISDICTION

The final decree of The Court Of Appeals, State Of New York,denying permission to appeal,was received on January 3,I973.He filed a notice of appeal to The Court Of Appeals on January 26,I973,and to the

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Supreme Court Of New York on the same date. The jurisdiction of this Court is invoked under 28 U.S.C. Sec.1257 (2) and under the U.S. Constitution Art. III Sec. 2.Also under 28 U.S.C. Sec.1331,and 42 U.S.C. Sec. 1983.

QUESTIONS PRESENTED

1-Do the State Courts have jurisdiction of a seaman's suit against a maritime union and its officers individually,who prevent him from rejoining his ship by invoking the union-security clause in a contract with his employer,thereby causing his dismissal from his ship.?

2-Does a seaman who leaves his permanent job aboard his ship for one trip off for a vacation,have reemployment rights aboard the vessel,notwithstanding his refusal to pay an initiation fee,demanded by the officers of the union?

3- Does the First,Fifth,Ninth and Four - teenth Amendments of the U.S.Constitution protect a citizen in his property rights to his job,and his vacation,pension and welfare rights in his union,irregardless of any private contract between a company

and a union which requires membership in good standing as a condition of employment,without giving him a hearing to explain his reasons for refusal to pay an initiation fee?

4- Does Art.I Sec. II of New York State Constitution protect a citizen resident from being dismissed from his permanent job for refusing to pay an initiation fee to a union?

5- Does the Saving to Suitors clause of the Federal Constitution Article 6,Cl I, and the Judiciary Act of I789, I Stat.B allow an action to be brought in New York State Courts in which there was a legal remedy in New York State prior to I789?

6 - Does a seaman have a property right to a permanent job aboard a ship under the Civil Rights Act Of I964,Title 42 U.S.C. Sec.I983,and is that right also protected by the Ninth Amendment to the U.S. Constitution,and the Merchant Marine Act of I920,specifically by Title 46 Sec 599 (a) 4I Stat.I006,Sec I0 (a) ?

7 - Does a member of a maritime trade union who leaves the union involuntarily,regain his membership rights by invoking the

protection of Title 29 U.S.C.A. Sec.402, 412,by claiming he was not accorded due process in his alleged expulsion from the union?

CONSTITUTIONAL AND STATUTORY PROVISIONS

Amendment V Of U.S. Constitution.

"No person shall....nor be deprived of life,liberty or property,without due process of law".

AmendmentXIV Of U.S. Constitution.

"No state shall make or enforce any law which shall abridge the priviliges or immunities of citizens of the United States, nor shall any state deprive any person of life,libery or property,without due process of law,or deny to any person within its jurisdiction the equal protection of the laws.

Amendment IX Of U.S. Constitution

"The enumeration in the Constitution of certain rights shall not be construed to deny or disparge others retained by the people."

Article III SEC. 2,Of U.S. Constitution

"The judicial power shall extend ...to all cases of admiralty and maritime jurisdiction."

STATUTES INVOLVED

Title 28,U.S.C. Sec. I257 (2)
Title 28,U.S.C. Sec I33I
Title 29 U.S.C. Sec. I58 (a) (3) Of National Labor Relations Act,Sec. I58 (b) (2) Sec. 8 (a) (3)
Title 46 U.S.C. 599,4I Stat. I006, Sec. I0 (a) Merchant Marine Act I920....

"If any person shall demand or receive either directly or indirectly ,from any seaman or other person seeking employment as seaman,or from any person on his behalf, any renumeration whatever for providing him with employment,he shall for every such offense be deemed guilty of a mis - demeanor and shall be imprisoned not more than six months or fined not more than $500."

Title 29 U.S.C.A. Sec.4I2,Sec. 402:

"Member or members in good standing when used in reference to a labor organ- ization,includes any person who has fulfilled the requirements for member - shipin such organization and who neither has voluntarily withdrawn from membership after appropriate proceedings of the Constitution and by -laws of such organ - ization."

Title 29 U.S.C. Sec.523,Sec.603 (a)
73 Stat.540...

"Except as specifically provided to the contrary,nothing in this Act shall reduce or limit the responsibilities of any labor organization or any officer.... or other representative of a labor organ - ization....under any other Federal Law or under the laws of any State and except as explicitly provided to the contrary,nothing in this Act shall take away any right or bar any remedy to which members of a labor organization are entitled under such other Federal Law or Law of any state."

Art.I Sec.II of New York State Constit - ution.

"Equal protection of laws,discrimination in civil rights prohibited."

"No personshallbe denied the equal protection of the laws of this state or any subdivision thereof.No person shall, because of race,color,creed or religion, be subject to any discrimination in his civil rights by any person or by any firm, Corporation,or institution,or by the State or any agency or subdivision of the State."

Title 42 U.S.C. Sec 1983 .-Civil Rights Act.

STATEMENT OF FACTS

The petitioner,a seaman,involuntarily left the Union in I950 because the United States Coast Guard refused to issue a Radio Officer's License to him,therefore he could not be employed aboard ship without that document.

He received an inactive assignment slip from the union dated March I7,I950.The official who gave him this slip told him that it would save him a years dues if the Coast Guard reissued him his license before a year was up.In I967 he received the Radio Officers License as a result of suing the Coast Guard Commandant.(Peltzman v Smith,404 F2d 335 (I968).He returned to the Union in I968 and sailed three and one-half years with a permit card,paying the same dues as a regular member.

After sailing for about one and one-half years the union officials demanded an initiation fee of $ 2,000 verbally from petitioner.He refused to pay telling them that he was not a new member and that hundreds of seamen who had been screened off thier ships by the Coast Guard and who had returned to thier unions as a result

of the Parker v Lester decision (227 F2d 708 (1955) did not have to pay any initiation fee, but in some cases a small fee to keep their pensions credits up to date. The officials told petitioner that if he did not pay the iniation fee he would lose his Group I shipping list seniority and would have to go on the Group 2 shipping list.

Petitioner tried to get this matter settled by arbitration as provided in the contract, by writing a letter to Secretary of Appeals Board. (Appendix 8, Record appendix A27). After about two and one half months passed and no arbitration, or hearing being available, Petitioner filed an unfair labor complaint with the N.L.R.B. As a result, he was put on the Group I shipping list. Shortly thereafter, the N.L.R.B. sent petitioner a letter asking him to either come to the office and be interviewd about the complaint, or withdraw the complaint, and if he did niether, the N.L.R.B. would dismiss the complaint. Petitioner withdrew the complaint as he wanted to get a ship and work again after being unemployed about three months while endeavouring to settle this dispute.

After Petitioner had sailed on the S/S GreenRidge for nine months,he requested the Captain for one trip off for a vacation,as per union regulations.On arrival in Bayonne,New Jersey May 28,I97I, a union official handed petitioner a letter (Appendix 3) dated January I3 I97I, demanding an initiation fee of $2,000 and threatening him with dismissal from his job if he did not pay.That same day the Captain of the S/S Green Ridge handed petitioner a letter (Appendix 4) dated May 28,I97I,informing him that he would not be rehired without a"clearance" assignment from the union.

Petitioner refused to pay,and complained to the N.L.R.B.They refused to issue a complaint.Petitioner appealed to the 2nd Circuit Court Of Appeals,docket nr 72-I09I, Peltzman v N.L.R.B.That Court refused to review,and did notfile an opinion.Petitioner appealed to the U.S.Supreme Court docket nr 7I-I573.This Court refused certiorari and petitioner filed for a rehearing which also was denied.

Petitioner sued the union in Supreme Court,Special Term sometime in July I97I

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(Peltzman v American Radio Association et al,327 NYS 2d 505),seeking reinstatement into the union,reinstatement to his permanent job aboard the S/S Green Ridge, and damages for wrongful discharge from his employment.The suit was dismissed by Special Term for lack of jurisdiction.The Appellate Division First Department affirmed unanimously,and refused to grant permission to appeal to the Court of Appeals.Petitioner filed an appeal to the Court of Appeals for permission to appeal,and that was denied on January 3,I973.Petitioner is filing this appeal within the ninety days period from that date.

REASONS FOR GRANTING THE WRIT

I.The petition should be granted because the lower Courts erred in ignoring the Constitutional safeguards which protect the individual from his Government's administrators,his employers and unions illegal actions.

2.This Court has never specifically ruled whether Title 29 U.S.C.A. Sec.4I2,402 protects a seaman who involuntarily leaves a union because of the loss of his license by the illegal actions of

the Coast Guard, and when he regains that license and rejoins the same union, and is told by the officers of that union that he must rejoin as a new member, notwithstanding that the statute defines "Members or members in good standing when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organ - ization and who neither has voluntarily withdrawn from membership after appropiate proceedings of the Constitution and by laws of such organization".

3. This Court in Patterson v Bark Eudora (I90 US I69) was cited by Justice Brandeis in a dissenting opinion in Adams v Tanner 344 US 6I6 (I9I6) as a precedent for protection of the applicant for a job, the Act of Congress Dec.2I, I898, 30 Stat.755, 763, which provides among other things:

"If any person shall demand or receive, either directly or indirectly, from any seaman or other person seeking employment as a seaman, or from any person on his behalf, any renumeration whatever for providing him with employment, he shall for every such offense be liable to a

penalty of not more than a hundred dollars.

Compare Judge Bloom's statement in his order of April 20,I972,denying leave to present new facts,(Appendix 2) that Title 46 Sec 599 does not bar the acts sought by the complaint to be restrained.

Actually sec 599 (a) adds a penalty of a jail sentence to the old Act of I898,besides the raising of the fine from one hundred to five hundred dollars.

4.Petitioner argues that the union could not demand any initiation fee whatsoever because of the restriction in Title 46 U.S.C.A.Sec.599(a) of 4I Stat I006.He also argues that he is still a member of the union under the definition of a member according to 29 U.S.C.A. Sec.402,4I2. Petitioner never received notice of his alleged expulsion from the union on March 3I,I950,only I7 days after the union official had given him an inactive assignment slip.petitioner documented this below in his pleadings,but the union never even answered his complaint and did not put in any documentary evidence.

Petitioner asks if it is logical to assume that the union would expel him I7 days after giving him this inactive assignm ent,when the purpose was to try to save him the expense of paying a years dues if he had taken out a withdrawal card.

5.The defendants rely on Amalgamated Assoc. of Street Electric Ry.and Motor Coach employees of America v Lockridge, 403 US 274 (I97I) 29 Led 473.Petitioner argues that Lockridge does not apply because he was not a seaman,he had not left his union involuntarily,and he did receive notice of his delinquency in dues, whereas hahadhe protection of the Merchant Marine Act,which protects a seaman from the union checkoff on dues and other protection not available to land employees. Also petitioner was seeking reinstatement into the union and this Court held ,and the four dissenting opininons held that Gonzales should have been applied,where the member seeks reinstatement,he can sue in State Court.

6.Petitioner argues that the decision of Judge Bloom,in dismissing the case did not mention even one seaman case.Most of

the cases are strike and picketing situations.Not one mention is cited of the protection of either the U.S. Constitution or the New York Constitution which petitioner relies on to protect his permanent job rights on the vessel he was assigned to and which he left for a vacation.he pleaded the Constitutional rights in his complaint and in his pleadings in all the lower courts.

7.In Wuebker et ux v James (Bowles price administrator intervenor (I944), 56 NYS 2nd 67I.

Syllabus 3 - "A state has the exclusive right to determine jurisdiction,and authority ofits State Courts,to interpret and apply and enforce its laws with respect to contracts made within its borders.U.S. C.A. Const.Art.I ,Sec 8 Amend IO.

Syllabus 8 -"Under Constitutional requirements that all members of the legislature and all executive and judicial officers of the several states shall take an oath to support the Constitution alone,as it is written,is the sole test, and support of an act of Congress or any law promulgated by any other federal

official or any Court decision is not required.U.S.C.A.Const.Art.6.

8. In paragraph I9 of Petitioner's reply affidavit and pleading opposing motion to dismiss (record appendix A I48),he cites cases 2I,2,3,4,5,6,23,24,25,I2,I4,that he can pursue his remedy in state courts while complaining to NLRB,on other aspects of the case.

Case 2:Real v Curran,285 App.Div. 552, 553,I38 NYS 2d 809,8II.In action by expelled member of labor union for judgment declaring void his expulsion and restoring him to membership,mandating issuance to him of union card and for other relief,state court had jurisdiction to order members restoration to union membership even though it did not have jurisdiction to render other relief requested.National Labor Relations Act,Sec 8 (b)(2(as amended by Labor Management Relations Act of I947,29 U.S.C. Sec I58 (b) (2).

Case 3 :Madden v Atkins,I74 NYS 2d 633. Labor unions should not by expulsion deprive thier members of thier jobs without proof,fairly raised and fairly heard, of substantial wrongdoing.

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Case 5:Mahoney v Sailor's Union of the Pacific,275 P.2d 440.Reinstatement ordered because of denial of property rights of union member without due process oflaw. Also held that NLRB did not have exclusive jurisdiction of case and state court had power to reinstate Mahoney.

Case 6: Leopold Berman et al,v N.M.U. and various Shipping Co's,I66 F Supp.327, The Court decided it had jurisdiction on complaint of seaman who said they were being discriminated by Union and Shipping Co's.Judge Bicks madea settlement and plaintiffs were restored to Union and Ccunsel's fees of petitioner's $ I0,000 was paid by Union and shipping co's.Action arose under Labor Management Relation Act 29 U.S.C. Sec I4I et seq.The Court had jurisdiction by virtue of 28 U.S.C. I337. Steamship Co's claimed NLRB had jurisdiction but Judge Bicks said the Court had jurisdiction.

Case 23: Sullivan v Borrows,2I N.E. 2d 275,303 Mass I97,whereofficers of a union compel a member to relinquish his employment until he pays an unjustified claim, they are liable for the loss suffered by the member because of thier action.

Case I4: Anno.I68 Alr I475.In a proper case an injunction against a threatned unlawful expulsion will be granted and a member of a labor union who has been illegally expelled may be reinstated by the Court,by an action for an injunction and a judgment of reinstatement,according to the practice in the particular state.

-Local IOO of United Ass'n of Journeymen and Apprentices v Borden,tex.83 Sup.Ct. I423,373 US 690,IO Led 2d 638,reh den,84 S Ct 28,375 US 872,II Led 2d IOI.

MO -Sipes v Vaca ,397 S.w. 2d 658, cert granted,Vaca v Sipes 86 S Ct I863, 384 US 969,I6 Led 2d 680.

N.Y. - Green v Folks,2I5 NYS 2d II6,I3 A.D. 2 ,744.

N.c.-Gainey v Local 7I,International Brotherhood of Teamsters,Chauffeurs, Warehousemen and Helpers Of America, II3 S.E.2d 594,252 N.C. 256.

And a State or Federal Court may have jurisdiction of such dispute in order to restore to union membership a wrongfully expelled member of a union.-N.Y.

Real v Curran,supra:"THe National Labor Relations Board does not have

exclusive jurisdiction where the lawsuit is focused on purely union matters, that is on relations between the individual union members and the union not having to do directly with matters of employment, and the principal relief sought is the restoration of union membership rights."

9. The following cases show the relation of the seamen towards his ship under the contracts between the shipping co's and the unions, in thier collective bargaining agreements.

Southern SS Co v NLRB ,3I6 US 3I,62 S Ct 886,86 Led I246:Formal signing off of shipping articles by seaman on termination of voyage was not conclusive on question whether seaman had been discharged on the ships return to home port, but tenure of their employment was required to be determined in the light of all the evidence concerning the employers employment customs and practices.

In Vitco v Jonich,I30 F supp 945 affmd 234 F2d I6I,"Period of employment" historically meant to the end of voyage but now includes full wages throughout the period of employment, whether employ-

ment is for a voyage or for a definite time.

In National Labor Relations Bd.v Waterman SS Co.309 US 206,2I8,Led 704 ,7II, 60 S Ct 493,and South Atlantic SS Co v National Labor Relations Bd.CCA 5th,II6 F 2d 480,writ of cert den in 3I3 US 582, 85 Led I538,it was held,

Seaman's tenure and relationship are not terminated by the mere expiration of articles.

In Peninsular & O.SS Co v National Labor Relations Bd. CCA 5th,98 F 2d 4II, and in Texas Co v N.L.R.B. CCA 9th I20 F 2d 2I86,it was held,

The Maritime Law ,when in conflict with the National Labor Relations Act,is supreme.

Petitioner argues that his assignment to the ship was a permanent job.He left for a vacation of one trip off.By refusing to give seaman "clearance", the union forced the employer to discharge petitioner, and assigned a union man from the hiring - hall to replace him.(See telegram from employer Appendix 5).In this connection see Brown v National Union of Marine Cooks and Stewards,reported in Court

decisions -N.L.R.A. Vol viii,p I070,
(I04 F Supp 685).

The NLRB regional director instituted an action for injunctive relief under Sec I0 (j) of the Labor Management Relations Act.I947.As a result men who were screened off by the Coast Guard and other seamen who had optioned to join a rival union were reinstated to thier jobs,notwithstanding the union's refusal to give these men assignments to these jobs.Answering the defense of the employer thatthe contract provision obligated them to accept only men assigned to them by the union,Judge Lemmon decided that the employer may not take shelter under the contract if there be a showing of unfair practice,since it is the statute and not the contract which is the measure of duty,and the liability. (see Sept I,I97I Letter from employer shipping co,to petitioner,last paragraph, quote As you no doubt know,our contract with the A.R.A.prohibits our selecting or employing Radio Officers.they are assigned by the A.R.A. in accordance with thier shipping rules.(Appendix 6).

In Radio Officers Union of the Commercial Telegraphers Union,A.F.L. v National Labor Relations Board,347 US 17,98 Led 455,74 S.Ct 323,41 ALR 2d 621,the provisions of the National Labor Relations Act by which it is an unfair practice for an employer to discriminate against employees to encourage or discourage membership in any labor organization, 29 U.S.C. Sec 158 (b) (2), and 29 U.S.C. Sec 158 (a) (3) ,or for a union to cause an employer to practise such discrimination,were designed to allow employees to freely exercise their right to join unions,be good,bad,or indifferent members or abstain from joining any union without imperiling their livlihood.

10.Petitioner wishes to show by the citations of the following cases involving the American Radio Association,before the NLRB,that the previous decisions entered therin have not stopped the A.R.A. from continuing its unfair labor practices, and the illegal contract signed in 1949 still has the same clauses in it that was declared illegal then,and therefore the contract is still invalid because in effect

and actual practice it is a closed shop practice,clearly illegal under the Taft-Hartley Act;but semantically called a union - security clause in the contract. The hiring hall procedures are still discriminatory vis a vis non - members, permit card members,and the employer has to apply to the union for manning his ships and has no right to hire or rehire without a "clearance" from the union.

I.In the matter of American Radio AssO-ciation affiliated with the congress of industrial organization & Carl w.Lundquist & William Steinberg,case no..2-CB - 88, decided April I9,I949,82 NLRB I344,No.I5I.

Relating to a "closed shop" agreement and to a strike by the A.R.A. to force employers to sign such an agreement.The Decree was consented to by American Radio Association in Docket No. 2I79I US Ct Of Appeals 2nd Circuit ,Dec.28,I950.

2. A decree filed by NLRB against A.R.A. Docket No 24737,filed July I6,I957.The record in this case is not available in the published volumes in the 2nd Circuit. The clerk in the court informed me that there were no other papers available,and

that probably they had been removed by the NLRB.In response to petitioners inquiry about this case,they informed him that they had no records of that case in their files.

3. In thematter of Pacific Maritime Association,successor in interest to Pacific American Shipowners & Its member companies and Radio Officers Union Marine Division,Commercial Telegraphers Union Afl-Cio,Case No. 20-CA-I66 - Decided April 28,I950,89 NLRB No. II5.

In this case the American Radio Association intervened.Board ruled that contract signed after a strike contained illegal hiring - hall procedures and closed -shop agreement.

4. American Radio Association (Pacific Maritime Assoc.) Jack Hajim.Case No 20 - CB- 395 April 9,I957,II7 NLRB No I5I.

Trial examiner ruled union was engaging in unfair labor practices,but the Board ruled to dismiss the complaint because it was filed six months after the illegal unfair practices were committed.(note contains Senator Taft's statement about discriminatory hiring halls.)

5.NLRB v Alaska SS Co;et al (A.R.A.), 22I F2d 357,Feb 26,I954.

Petition for enforcement for illegally participating in hiring arrangement for preferential treatment to union members. (Granted)

6. NLRB v Alaska SS Co,et al A.R.A., 245 F2d 282,May 22,I957.

Enforcement of back pay order.(Granted).

Petitioner also contends that the union Constitution is illegal.On p 29 Article XII (c) -Calls for automatic expulsion for non-payment of dues,without notice or hearing . (Appendix 7).

On p 32 (e)-Oath which petitioner objects to and will refuse to take.

On p 22 (a) - Trial of officers on charges must be signed by I00 members (one hundred) as contrasted with alleged expulsion of petitioner from union in I950 without notice or hearing.Petitioner argues that this is not due proces or equal treatment under the law but arbitary and illegal action,and contrary to the laws of the land.

On p 26 (Sec 4) - Relating to expulsion of member whose license is revoked by Coast Guard.This section not followed by union in petitioner's case.

CONCLUSION

PETITIONER THEREFORE SUBMITS THAT THE Courts below erred in their dismissal of his suit against the union, and its individual officers, for lack of jurisdiction, his motions for discovery, and a writ of mandamus to reinstate him to his permanent job, and reinstatement to the union he left involuntarily, and that the petitioner's prayer for a writ of certiorari should be granted.

Respectfully submitted
Archie Peltzman
8725 I6th Avenue
Brooklyn, New York II2I4
Petioner, Pro Se

APPENDIX I

Opinion Of J Bloom dated December and entered Jan.20,1972

SUPREME COURT : NEW YORK COUNTY
SPECIAL TERM : PART I

ARCHIE PELTZMAN,

PLAINTIFF,

-against-

AMERICAN RADIO ASSOCIATION AND ITS Officers individually and in their respective capacities,W.R.Steinberg, President,Ralph Baird,Vice President,Bernard L.Smith, Secretary -Treasurer,Yoseph Y.Rubin,Ted Berman,Harvey Stricharz,Floyd Hepting as National Council Members

Index No I6274/I97I

Bloom,J. :

By this suit plaintiff seeks a mandatory injunction restoring him to membership in the defendant union,directing that defendant issue a clearance slip requiring his assignment to a specific vessel;and for damages alleged to have resulted from the purported improper dismissal from his job.The motion to dismiss and the cross - motion for directory relief pose the issue of federal preemption and the jurisdiction of this court.

Opinion of J Bloom

At one time more than 20 years agop plaintiff had been a member of defendant. In I949,his license was revoked by the Coast Guard.By reason thereof he was no longer eligible to hold a position on a vessel and the union transferred him to inactive status.

The plaintiff stopped paying his union dues after he had lost his license.On March 3I,I950,he was expelled by defendant under a clause of its constitution which provides:"All members shall pay dues quarterly in advance.All members more than six months in arrears shall be automatically expelled .An expelled member to reenter the Union shall only be able to do so in accordance with the permit card provisions of this Constitution." Defendant asserts that, at the time of his expulsion,plaintiff was in arrears in the payment of his dues for more than six months.Plaintiff does not deny that he was in arrears in dues payments for the specified time.However,he contends that the union,by placing him in an inactive status, relieved him of the obligation to pay dues.In effect, he asserts that his membership in the union was in a state of suspension and that he

became eligible for reinstatement to active membership upon obtaining a job and paying his dues,without payment of any new initiation fee.Be that as it may, plaintiff thereafter regained his license and,as a permit card member:holder,the union,in I969,referred him to a steamship company which placed him on one of its vessels.Under the collective agreement subsisting between the union and the steamship company all employees in the bargaining unit were required to become and remain members of the union within 30 days next following the commencement of their employment.

While the plaintiff paid quarterly dues as a permit card holder,he never paid the required initiation fee.On January I3,I97I plaintiff was notified by the union that he was required to pay the initiation fee, together with all arrerages in dues,within 30 days.The letter of notification concluded with the sentence " If such payment is not made,we shall have no alternative than to request your immediate discharge by the Company." The plaintiff,contending that his transfer to inactive status in I949,

automatically left him with union membership, refused to pay the initiation fee. Discharge from his employment followed.

II

Following his discharge, plaintiff filed an unfair labor practice charge with the National Labor Relations Board charging that the union had violated Section 8 (b)(I)(A) and (2) of the National Labor Relations Act, as amended (29 U.S.C.A. Sec.I58 (b) (I) (A) and (2). That section provides that it shall be an unfair labor practice for a labor organization to restrain or coerce employees in the exercise of rights guaranteed in Section 7 (29 U.S.C. Sec I57) or to cause or attempt to cause an employer to discriminate against an employee. Section 7 guarantees the right of self-organization for purposes of collective bargaining as well as the right to refrain from activities.

Sections 7 and 8 (b) (2) contain certain exceptions which are here most pertinent. Both incorporate by reference so much of Section 8(a) (3) 29 U.S.C.A. Sec.I58 (a) (3) as exempts from the prohibited

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discrimination discharge of an employee for failure to comply with a valid union shop provision of a collective bargaining agreement.

The National Labor Relations Board, Region 2, by letter dated October 26, 1971, informed the plaintiff that it had investigated the charges and found them to be without merit. Accordingly, it refused to issue any complaint against defendant. Therafter, on October 29, 1971, in accordance with the rules and regulations of the NLRB, appeal was taken by plaintiff to the General Counsel of the NLRB from the refusal of the 2nd Region to issue a complaint. So far as is here indicated that appeal is still pending and undetermined.

The initial action brought by plaintiff against defendant in this court was dismissed, without prejudice, by order of Mr Justice Gellinoff, dated October 6, 1971, on the ground that service of process had been improperly made. Therafter, on October 18, 1971, while plaintiff's charge was still pending and undetermined before the 2nd Region, this action was instituted.

III

The concept of federalism in labor relations finds origin in the interstate commerce and federal supremacy clauses of the Constitution (U.S. Constitution,Article I,SEc.8 and Article vi,).It would serve no useful purpose to trace the applicability of the doctrine ofpreemption to labor relations from the initial,tentative determinations(cf.Allen-Bradley Local no.IIII v Wisconsin E.R..B.; 315 U.S. 740;Auto Workers v Wisconsin E.R.B.; 336U.S. 245; Algoma Plywood & Veneer Co.v Wisconsin E.R.B; 336 U.S. 301; Amalgated Association v Wisconsin E.R.B.;340 U.S. 383) to the emergence of the doctrine as one of general application (Garner v Teamsters Union, 346 U.S. 485;Weber v Anheuser-Busch,Inc; 348 U.S. 468.) It is enough to point out that the full scope of the doctrine soon thereafter found definition in four cases (Guss v Utah LRB,353 U.S. I;Amalgamated Meat Cutters v.Fairlawn Meats,Inc;353 U.S. 20;San Diego Building Trades Council v Garmon (Garmon I),353 U.S. 26;San Diego

Building Trades v Garmon (Garmon II) 359 U.S.236).These decisions made plain that Section IO (a) of the National Labor Act (29 U.S.C.A. Sec I60 (a), which entrusted power to the Board " to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce" vested the Board with exclusive power to enforce rights protected under Section 7 and to compel cessation of activities prohibited by Section 8.Indeed, they went further in limiting state jurisdiction by pointing out that " In the absence of the Board's clear determination that an activity is neither protected nor prohibited or of compelling precedent applied to essential undisputed facts,it is not for this Court to decide whether such activities are subject to state jurisdiction.The withdrawal of this narrow area from possible State activity follows from our decisions in Weber and Guss.The governing consideration is that to allow the States to control activities that are potentially subject to federal regulation involves too great a danger of conflict with national labor policy".

+ (Garmon II, supra, p.246.) And this rule prevailed where the NLRB, as a matter of policy, refused to entertain a proceeding even though the necessary elements of Board jurisdiction, as fixed by law, were present (Guss v Utah LRB, supra).

Notwithstanding the full reach of the doctrine of preemption as set forth in these cases some slight residue of jurisdiction still remains in the States. Violence (Youngdahl v Rainfair Inc; 355 U.S. 131; Auto Workers v Wisconsin ERB, 351 U.S. 266; United Construction Workers v Laburnum Construction Corp; 347 U.S. 656; Russell v Auto Workers, (356 U.S. 634); mass picketing (Allen -Bradley Local IIII v Wisconsin ERB, supra), and forms of activity imperiling domestic peace are of such paramount state concern that in the absence of clearly expressed congressional direction, the states are not ousted of jurisdiction (Garmon II, supra, p 247). Additionally, the

+ The quoted portion, although stated in different terms, is subject to the interpretation that Congress intended that activities, within the reach of the National Labor Act, which are neither protected under Section 7 nor prohibited under Section 8 are within the allowable area of economic conflict.

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states may,under given circumstances, reach out to affect union membership agreements where.under the authority conferred upon the states pursuant to Section I4(b) of the Act (29 U.S.C.A. Sec I64(b),state law expressly precludes such agreements (Retail Clerks v Schermerhorn, 373 U.S. 746).

IV

Thus far we have dwelt with the doctrine of federalism in labor matters only as it encompasses the relationship of employer and union.The scope of the doctrine is essential to any understanding of its effect upon the relationship between the union and its members.

The first case involving the latter relationship to come before the Supreme Court (Intl.ASSN. of Machinists v Gonzales,356 U.S. 6I7) dealt with a suit in a state court by a member of a union to compel the union to restore him to membership from which he claimed to have been unlawfully expelled and for consequential damages.

Basing its holding on the thesis that

"the protection of union members in thier rights as members from arbitary conduct by unions and union officers has not been undertaken by federal law" (p 620),the court held that the state was not ousted of jurisdiction eventhough under appropiate circumstances such expulsion might constitute forbidden discrimination under section 8 (b) (2) of the Labor Act.

Although Garmon II was decided after Gonzales,no endeavor was made to affect the reach of Gonzales.Not until Amalgamated Assn.etc.v Lockridge (403 U.S. 274) was the conflict squarely presented.In Lockridge,the respondent was a member of the union and was employed by Western Greyhound Lines under the term of a collective agreement which contained a valid union shop provision.In September, I959,Lockridge rescinded his checkoff authorization.By consequence,he became obligated to pay his dues directly to the union.The constitution and general laws of the union required that monthly union dues be paid by the I5th day of the month.Arrears running beyond the last day

of the second month resulted in automatic suspension from membership.They further provided that where union shop agreements existed arrearage of union dues for one month would result in suspension from membership and removal from employment.

On November 2,1959,Lockridge was suspended from membership for failure to pay October union dues.Simultaneously, notice was sent to Greyhound and request made that Lockridge be removed from employment.Greyhound complied promptly. A belated effort to cure the default was made by Lockridge.When this was rejected he instituted suit in the state court, contending that the union had wrongfully deprived him of his employment,without just cause;that his suspension was wrongful under the provisions of the union's constitution and general laws and resulted in a breach of contract between him and the union,with consequent loss of his employment with Greyhound.

Thus,the complaint fell squarely within the ambit of Gonzales.Contrary to the holding in Gonzales,however,the court

in Lockridge held that the acts complained of fell within the purview of Section 8.Holding that the states were precluded from assuming jurisdiction over matters which fell,arguably,under the jurisdiction of the Act,the Court pointed out that "nothing could serve more fully to defeat the congressional goals underlying the Act than to subject , without limitation,the relationships it seeks to create to the concurrent jurisdiction of state and federal courts free to apply the general local law.Nor would an approach suffice that sought merely to avoid disparity in the content of proscriptive behavioral rules.Conflict in technique can be fully as disruptive to the system.Congress erected as conflict in overt policy." (pp 286,287)

Thus,the doctrine of federal preemption, now full blown,is applicable,under appropiate circumstances,equally to the relationship of a union with its members as it is to the relationship of union and employer.

V

IN the instant case plaintiff filed a charge

against the defendant with the 2nd Region That charge was dismissed after investigation not because it did not fall within the area of proscribed activities but because it was found to be without merit. Appeal is now pending to the General Counsel of the NLRB.Whether or not a complaint is ultimately issued it is clear under Lockridge that exclusive primary jurisdiction rests withthe NLRB and that this court does not have jurisdiction of the subject matter of the action.Accordingly,the motion to dismiss is granted.The cross motion for a mandatory injunction is denied.

Settle order.

Dated: December , 1971

J.S.C.

APPENDIX 2

Order of J Bloom dated April 20,I972

By orderdated January 20,I972, plaintiff's motion for a mandatory injunction was denied and defendant's motion to dismiss the complaint was granted(see opinion 327N.Y.S. 2d 505). A motion for leave to reargue was thereafter denied.Plaintiff now moves for leave to rehear and renew (Riggs v Pursell,74 N.Y. 370),allegdly upon the basis of"new facts".All that is now advanced is the claim that "46 U.S.C.A. Sec 599 bars the acts sought by the complaint to be restrained.A mere glance at the statute makes it at once apparent that it is utterly without application to the situation here presented.There is,therefore,no warrant for renewal or rehearing of the original determination.Accordingly, the motion is denied.

Dated,April 20,I972

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APPENDIX 3

Letter Dated Jan.I3,I97I from union demanding payment.

Affiliated with the American Federation Of Labor and Congress of Industrial Organizations

AMERICAN RADIO ASSOCIATION

270 Madison Avenue New York,N.Y. I00I6
Murray Hill 9-5754 Cable Address:
ARADIOCIO NEW YORK

January I3,I97I

Mr Archie Peltzman
I85 Wortman Avenue
Brooklyn,N.Y. II207

Dear Sir:

Please be advised that pursuant to Section 4 (b) of the Collective Bargaining Agreement entered into between the American Radio Association,AFL-CIO and the Central Gulf Steamship Co,you are required as a condition of employment to become a member in good standing of this organization.

Accordingly,within thirty (30) days from the date thereof,you are required to tender the sum of Two Thousand Dollars ($ 2,000.00.), (together with arrears of all dues and fees, if any) as the initiation fee required for acquiring Union Membership.

If such payment is not made,we shall have no alternative than to request your immediate discharge by the Company.

Very truly yours,
s/Bernard L.Smith
Bernard L.Smith
Secretary-Treasurer

HLS:LB
Via Registerd R.R.R.
CC: SS GREEN RIDGE,v/o Wilmington Shipping Co;P.O.BOX I809,Wilmington,N.C. 2840I (Air Mail,Reg.R.R.R.)
cc: Central Gulf S.S.Co,New Orleans,La.

COPY BOUND CLOSE IN CENTER

APPENDIX 4

Letter dated May 28,I97I,Central Gulf SS Co.to Mr Peltzman.

CENTRAL GULF STEAMSHIP CORPORATION
TELEPHONE 529-546I Cable address
Telex 058-7435 Centraship
TWX 8I0-95I-6044
International Trade Mart
No 2 Canal Street
New Orleans,La U.S.A.
70I30

S.S.Green Ridge
New York N.Y.

May 28,I97I

Mr Archie Peltzman
Radio Officer

Dear Mr Peltzman:
In accordance with your request I have ordered a replacement.Please be advised that you will not be able to rejoin the vessel without proper clearance from the Union.

Yours truly
s/W.C. Kenopke
W.C. Kenopke,Master
S.S.Green Ridge

APPENDIX 5

Telegram from Central Gulf To Mr Peltzman dated Aug.30,I97I

Western UnionTelegram

(57) SYD I68 NSA053

NS LLEOI2 PN POB TLX NEW ORLEANS LA 30 I006A CDT

ARCHIE PELTZMAN

I85 Wortman AVE BKLYN

DISREGARD PREVIOUS NOTICE TO REJOIN OUR SS GREEN RIDGE AS ARA HAVE PERMANENTLY ASSIGNED A RADIO OFFICER

CENTRAL GULF SS CORP.

I97I AUG 30 AM II 5

(I050)

COPY BOUND CLOSE IN CENTER

APPENDIX 6

Letter from Central Gulf SS Co to Mr Peltzman dated SEPT.I,I97I

CENTRAL GULF STEAMSHIP CORPORATION
Telephone 529-546I Cable Address
Telex 058-7435 Centraship
TWX 8I0-95I-6044
International Trade Mart
No.2 Canal Street
New Orleans,La U.S.A.
70I30

September I,I97I

Mr Archie Peltzman
8725 I6th Avenue
Brooklyn,New York II2I4

Dear Mr Peltzman:

This is in reply to your letter of August I7,I97I requesting correspondence between this office and the A.R.A. in connection with your removal by the Union,from our SS Green Ridge.

We have never corresponded with the Union concerning your case.The New Orleans A.R.A. agent telephoned the writer to acertain the itinerary of the vessel,a few days prior her arrival Bayonne.

After the vessel arrived Bayonne,A.R.A., New York informed the writer telephonically that you would have to be replaced until

APPENDIX 6

Letter from Central Gulf SS Co dated September I,I97I

some details of your standing with the Union were resolved.

As it was clearly a parochial problem the writer did not inquire of reasons and circumstances surronding the case,but to avoid our becoming involved in a breach of contract with the A.R.A.,the Master was instructed not to sign you on until you produced a clearance from the Union.

Due to our not having any correspondence with the A.R.A., we were under the erroneous impression a relief man had been assigned to the Green Ridge while your differences with the Union were being resolved,thus the reason for our routine wire notice to rejoin.

As you no doubt know,our contract with the A.R.A. prohibits our selecting or employing Radio Officers,they are assigned by the A.R.A. in accordance with their shipping rules.

Yours very truly,

Central Gulf STeamship Corp.

s/C.E. Whitcomb

Captain C.E. Whitcomb

Manager Marine Personnel

CEW: dh

cc: Mr G.A. Atkinson,N.Y.

APPENDIX 7

Union Constitution,Rules,June 28,1970
Article XII (c) All members shall pay dues quarterly in advance.All members more than six (6) months in arrears shall be automatically expelled.An expelled member to reenter the Union shall only be able to do so in accordance with the Permit Card provisions of this Constitution.
Article XII Sec 3 (e) Before an applicant for membership shall be accepted into the Union he shall be first approved by the National Council,and shall take the following oath:"I solemnly swear to be true and loyal to the Union and the labor cause,and to put into practice the principles laid down in the Constitution and to obey all rules the Union may adopt."
Article VIII Section I (a).Any Officer may be brought to trial on charges signed by one hundred (100) members in good standing over a period of sixty (60) days. The signed petition containg the charges shall be submitted to the Secretary - Treasurer who shall forward a copy to each member of the National Council for study.Should the charges be against

APPENDIX 7

Union Constitution, Rules

the Secretary Treasurer, the petition shall be submitted to the President.

Article IX. Sec 4.

Any member whose license as a Radio Officer has been suspended or revoked by the U.S. Coast Guard or by any Government Agency, a license or document necessary for employment as a Radio Officer; or who has been denied permission by the U.S. Coast Guard or by any other Government Agency, to ship by reason of his being a poor National Security risk; or who has been found guilty of a felony by a Court of Competent Jurisdiction, may be suspended and/or expelled from membership after due investigation and approval by the National Council subject to further approval by a majority of the members voting at Branch membership meetings held within fourteen (14) days after receipt of the National Council's decision. The decision of the membership shall be final; provided however, that an appeal may be taken to the next Convention.

APPENDIX 8

Petitioner's Letter to Maritime Institute asking for arbitration.

A.Peltzman
185 Wortman Ave
Bklyn 11207,NYC

Secretary of Appeals Board
American Merchant Marine Institute

Dear Sir,

I am filing this complaint,because theA.R.A. refuses to put my name on the Group I List and because they insist they will not do so unless I pay an initiation fee of $ 2,000.00 in order to become a member.

My position is that I am a member,(see enclosed docustats National Book No 5049 of American Communication Association and Book No 284 of American Radio Assn.Also official Assignment slip date 3/17/50.

I returned to sea after being illegaly deprived of my license by the Coast Guard.I have sailed on three voyages as a permit card member from Group 2 (see docustat).

My position is that in effect I was illegaly deprived of my license and since that suspension was removed,my membership automatically becomes active again,even if 17 years have elasped,since I have already made 3 voyages from Group 2 list,or more than one year and 6 months since I started sailing again in Dec.of 1967.

Please advise me of your decision in this matter.

Sincerely,
Archie Peltzman

ORDER OF APPELLATE DIVISION SUPREME COURT, DATED SEPTEMBER 26, 1972

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on September 26, 1972.

Present -Hon. Owen McGivern, Justice Presiding
Francis T. Murphy, Jr
Aron Steur
George Tilzer
Louis J. Capozzoli, Justices

Archie I. Peltzman,

Plaintiff-Appellant,

-against-

American Radio Association and its officers individually and in their respective capacities, William R. Steinberg, President, Bernard L. Smith, Secretary-Treasurer, Joseph I. Rubin, Ted Berman, Harvey Stricharz, Floyd Hepting as National Council Members,

Defendants-Respondents,

5607-10

ORDER OF APPELLATE DIVISION
SUPREME COURT, DATED SEPTEMBER 26, 1972

Appeals having been taken to this Court by the plaintiff - appellant from (1) an order of the Supreme Court, New York County (Korn, J.), entered on December 1, 1971, granting defendant's motion to strike plaintiff's interrogatories, except for items (g) and (h) therein; (2) an order of the Supreme Court, New York County (Bloom, J.) entered on January 21, 1972, dismissing the complaint; (3) an order of the Supreme Court, New York County (Streit, J.) entered on March 14, 1972, Denying plaintiff's motion to punish defendants for contempt; and (4) an order of the Supreme Court, New York County (Bloom, J.), entered on April 20, 1972, denying plaintiff's motion for leave to hear and renew, and said appeals having been argued by Mr. Archie Peltzman, appellant pro se, and by Mr. Edwin A. Steinberg of counsel for the respondents; and due deliberation having been had thereon,

It is hereby unanimously ordered that the orders so appealed from be and the same are hereby affirmed, without costs and without disbursements.

ENTER : HYMAN W. GAMSO
Clerk.

ORDER OF APPELLATE DIVISION
SUPREME COURT, DATED NOVEMBER 16, 1972

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on November 16, 1972

Present -Hon. Owen McGivern, Justice Presiding
Francis T. Murphy, Jr
Aron Steur
George Tilzer
Louis J. Capozzoli, Justices

Archie Peltzman,

Petitioner-Appellant,

-against-

American Radio Association and its officers individually and in their respective capacities, William R. Steinberg, President, Bernard L. Smith, Secretary-Treasurer, Joseph Y. Rubin, Ted Berman, Harvey Strichar, Floyd Hepting as National Council Members,

Defendants - Respondents,

M-10505

ORDER OF APPELLATE DIVISION
SUPREME COURT, DATED NOVEMBER 16, 1972

The above named petitioner-appellant having moved for leave to appeal to the Court Of Appeals from the order of this Court entered on September 26, 1972,

Now, upon reading amd filing the notice of motion, with proff of due service thereof, and the affidavits of Archie Peltzman in support of said motion, and the statement of Edwin A. Steinberg in opposition thereto, and after hearing Mr. Archie Peltzman, appearing pro se, for the motion, and Mr. Edwin A. Steinberg opposed,

It is ordered that said motion be and the same is hereby denied with $20 costs.

ENTER : HYMAN W. GAMSO
Clerk.

ORDER OF COURT OF APPEALS
STATE OF NEW YORK, DECEMBER 28, 1972

Archie Peltzman, Appellant,	:	
vs.	:	
American Radio Association and its officers, individually and in their respective capacities, et al; Respondents	:	Mo.No.910

Motion for leave to appeal denied.

SUPREME COURT, U.S.
FILED
APR 11 19
MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

72-1080

ARCHIE PELTZMAN,

Petitioner,

against

AMERICAN RADIO ASSOCIATION, *et al.*,

Respondent.

On Petition for Rehearing to the Court of Appeals of the State of New York

PETITION FOR REHEARING

ARCHIE PELTZMAN,
Petitioner Pro Se,
8725 16th Avenue,
Brooklyn, N. Y. 11214

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-1080

ARCHIE PELTZMAN, Petitioner

v

AMERICAN RADIO ASSOCIATION, et al,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

PETITION FOR REHEARING

Petitioner prays that this Court grant rehearing of its order of April 2, 1973 denying the petition for writ of certiorari, that a writ of certiorari issue to review the judgment of the Court of Appeals of the State of New York in the above - entitled case.

Grounds For Rehearing

Petitioner wishes to argue the following substantial grounds available to him although not previously presented.

I. Petitioner wishes to cite three English cases holding in substance that rules or regulations whether of a trade union, Edwards v Society of Graphical and Allied Trades (1968 E.No 954 I Ch.(Court of Appeal), a Jockey Club, Nagle v Fields and others 2 Q.B. 633 C.A. (1966), or a pharmaceutical society, Pharmaceutical Society of Great Britain and another, v Dickson (1968) (H.L.(E), A.C., are ultra vires and will be struck down by the Courts when such rules or regulations are an interference with a man's right to work which the law will protect, (per Lord Denning M.R.) and (per Sachs L.J.) are ultra vires and an unlawful restraint of trade, a fortiori in an industry where trade union membership is a prerequisite for employment (post pp 377 A-C, 382E-383B,) and the true grounds of jurisdiction in cases relaing to deprivation of employment rights is a man's right to work, (per Lord Denning's opinion in Nagle case supra p 646)(App 3a).

2. In the Edwards case supra on p375-376 (App Ia),Lord Denning M.R. discussing the rules by which the union claimed the power to remove Edwards under thier rules,and Rule I8 (4) (j) says,

" It is a condition of acceptance of membership that holders of such (temporary) cards must relinquish same immediately upon application by the branch committee responsible for thier issue and shall have no claim upon the union or its funds."

"Temporary members shall not have any right of appeal from any decision of thier branch committe or the executitive council."

(Quotes of Lord Denning)....

This point was not taken in the Court below;and I have had some doubt whether it should be allowed here.But,as it is a point of law which no further evidence can help,I think we should consider it. But I desire to say quite clearly that I think the point is bad,and for this reason; I do not think this trade union or any other trade union can give itself by its rules

an unfettered discretion to expel a man or to withdraw his membership.The reason lies in the mans right to work.This is now fully recognized by law.It is a right which is of especial importance when a trade union operates a "closed shop" or 100 percent membership for that means that no man can be employed or remain in employment with a firm unless he is a member of the union.If his union card is withdrawn,he has to leave the employment, he is deprived of his livelihood.The Courts of this country will not allow so great a power to be exercised arbitrarily or capriciously or with unfair discrimination, neither in the making of rules,nor in the enforcement of them.The law has means at its disposal.A trade union exists to protect the rights of each one of its members to earn his living and to take advantage of all that goes with it.It is the very purpose of its being.If the union should assume to make a rule which destroys that right and puts it in jepordy - or is a gratutious and oppressive interference with it - then the union exceeds its powers. The rule is ultra vires and invalid.Thus

if the union should make a rule purporting to give itself uncontrolled discretion to expel a member without hearing him, that rule would be bad. No union can stipulate for a power to expel a man unheard; see Faramus v Film Artistes Association (1964) A.C. 925, 947, per Lord Pearce. And the union cannot get round it by calling him a "temporary member". A temporary is just as much a member of the union as a full member. He pays his dues just the same, and he is entitled to equal protection by the law. The union has no right to expel a temporary member arbitrarily any more than it has a right to expel a full member. To call him a "temporary member" is only a covert way of claiming to exclude him at thier discretion; and as such it cannot be allowed.....
The union excluded him by virtue of a rule commonly called the "automatic forfeiture" rule. It is rule I8 (4) (h) which says "temporary membership shall terminate automatically if the member becomes [illegible] six weeks in arrears."

That rule is so positive in its language that I see no way of limiting it,not by way of construction ,nor by way of an implied term.Why then does it not apply in this case? I think it is for this simple reason;this rule,like the other, is invalid.It is an unwarranted enroach - ment on a mans right to work.....Such conduct can not be permitted.It is ultra vires.No union can stipulate for automatic expulsion of a man without giving him the oppurtunity of being heard;see what Lord Eversbed said in the Faramus case (1964) A.C. 925 at 941.

3. From opinion of Sachs L.J. p 382, (App2a) Quote

The Courts have always protected a man against any unreasonable restraint on his right to work even if he has bargained that right away and it matters not whether the bargain is with an employer or with a society (see Dickson v Pharmaceutical Society of Great Britain 1970) A.C.403 and the case there cited.)

4. From Lord Denning's opinion in Nagle case (supra),p 646d (App 3a)

All through the centuries Courts have

given themselves jurisdiction by means of fictions; but we are mature enough, I hope to do away with them. The true ground of jurisdiction in all these cases is a mans right to work. I have said it before, and I repeat it now, that a mans right to work at his trade or profession is just as important to him as, perhaps more important than his rights of property. Just as Courts will interevene to protect his rightsof property, they will also interevene to protect his right to work .

5. Petitioner believes his case is identical to the Edwards case, and the Nagle and Pharmaceutical case holdings support his arguments and pleadings below that his Constitutional rights have beendenied him. See Syllabus of those cases in(App 3a ,4a)

Conclusion

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted, and that upon such rehearing , a writ of certiorari issue to the Court of Appeals of the State of New York.

Respectfully submitted

Archie Peltzman

Archie Peltzman
Petitioner Pro Se

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Certificate of Counsel

I hereby certify that the foregoing petition for rehearing is presented in good faith, and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

Archie Peltzman

Archie Peltzman
Petitioner Pro Se

April 9, 1973

an application to the Lands Tribunal for whatever degree of expedition of hearing it is possible to afford.

Motion for mandatory order dismissed. Cross motion for leave to apply to Lands Tribunal and staying the action in the meantime granted.

Solicitors: *Theodore Goddard & Co., for Morgan, Bruce & Nicholas, Cardiff: Holman, Fenwick & Willan for Lean & Lean, Cardiff.*

K. N. B.

[COURT OF APPEAL]

EDWARDS *v.* SOCIETY OF GRAPHICAL AND ALLIED TRADES

[1968 E. No. 954]

1969 Nov. 25, 26, 27 — Buckley J.
1970 July 15, 16, 17, 20; 30 — Lord Denning M.R., Sachs and Megaw L.JJ.

Trade Union—Membership—Wrongful termination—Temporary member wrongfully deprived of union card and dismissed from union shop—Assessment of damages—On appeal, union's undertaking to grant full membership—Effect on estimate of future loss.

Damages—Earnings, loss of—Trade union—Wrongful exclusion from membership—Measure of damages—Basis of assessment—Actual financial loss plus sum for estimated future loss—Duty to mitigate damages by reasonable conduct.

Trade Union—Rules—Validity—Rule giving unfettered power to deprive temporary member of union card—No provision for natural justice or right of appeal—Loss of union membership affecting right to work—Whether void as in restraint of trade—Whether ultra vires.

A trade union covering a wide range of employment in the printing industry divided its membership into temporary and full members. Rule 18 (4) (h) provided that "temporary membership shall terminate automatically if the member becomes over six weeks in arrears" and sub-rule (4) (k) provided that "temporary members shall not have any right of appeal from any decision of their branch committee or the executive council." The plaintiff, a skilled craftsman in Grade I, had since 1960 been employed in a "100 per cent." union firm and was a temporary member of the union. Under a scheme operated by the union he authorised the deduction by his employers of his weekly union dues from his pay. By an oversight on the part of a union official the deductions were not made or paid over; but he was unaware of that until his local union official told him that by virtue of rule 18 (4) (h) he had ceased to be a member. Two applications for readmission

were rejected by his branch committee; and his employers were required by threat of strike action to dismiss him. In the area where he lived, work in his grade was in short supply and the union operated virtually as the labour exchange for vacancies. He was unemployed for some months.

In May, 1968, he began an action against the union claiming, inter alia, damages for breach of contract and a declaration that he was still a member. The union at first put in a defence that he had been properly excluded. Later the plaintiff obtained work in a non-union firm but was dismissed in May, 1969, when he refused to do a task outside his contract terms. He again became unemployed and received unemployment pay. In April, 1969, the union admitted that he had at all times retained his temporary membership and thereafter supplied him with particulars of some vacancies; but as they either were or appeared to be of the lowest grade he did not take them up.

On the trial of the action where the only issue was that of damages, Buckley J. awarded him the whole of his actual financial loss to the date of trial and a sum for future loss of earning capacity assessed on the formula applied in personal injury cases, namely, the yearly loss multiplied by ten, the total damages being £7,971.

On the union's appeal against the quantum of damages, it was submitted for the first time that as the union rules provided no security for temporary members the damages should be nil or at least that nothing should be awarded for future loss. At a late stage in the appeal the union undertook to grant the plaintiff full membership, a status which gave security in membership and under normal union practice would give some priority for suitable vacancies:—

Held, allowing the appeal by reducing the total award to £3,500, (1) that damages for the admitted breach of contract should consist of (a) the plaintiff's actual loss, viz. the difference between what he would have earned if he had remained in the union shop and what he in fact received in wages and benefit to the date of assessment, less such amount as the union might prove was due to his failure to act reasonably to mitigate the damage; and (b) an estimate of his future loss of earning capacity attributable to the withdrawal of his union card.

(2) That the plaintiff was entitled to the whole of his actual loss, for the union had not proved that he did not act reasonably in mitigation of the damage.

(3) That in estimating the future loss the court had to take into account the union's grant of full membership, albeit at a late stage in the proceedings, as a factor which should enhance his prospects of regaining his full earning capacity in a union shop and thereby reduce the damages awarded on the basis of only temporary membership, but in view of the union's previous conduct should balance against that factor his chances of getting the help which the union normally gave to full members and its control of vacancies in the industry.

Per Lord Denning M.R. and Sachs L.J. The assessment of future loss of earning capacity in an action for a trade union's breach of contract vis-à-vis a member is in some respects not analogous to the assessment of future loss in cases of personal injury for the union can mitigate future loss by restoring membership (post, pp. 378A–C, 379C–D).

(4) (*Per* Lord Denning M.R. and Sachs L.J.) That those provisions of rule 18 (4) which gave the union an unfettered

right capriciously and arbitrarily to withdraw temporary membership without regard to the rules of natural justice were invalid because (*per* Lord Denning M.R.) such rules are an interference with a man's right to work which the law will protect, and (*per* Sachs L.J.) are ultra vires and an unlawful restraint of trade, a fortiori in an industry where trade union membership is a prerequisite for employment (post, pp. 377A–C, 382B–383B).

Award of Buckley J., infra, pp. 357, 365D–E; [1970] 1 W.L.R. 379; [1970] 1 All E.R. 905 varied.

The following cases are referred to in the judgment in the Court of Appeal:

Addis v. *Gramophone Co. Ltd.* [1909] A.C. 488, H.L.(E.).
Cockburn v. *Alexander* (1848) 6 C.B. 791.
Dickson v. *Pharmaceutical Society of Great Britain* [1970] A.C. 403; [1968] 3 W.L.R. 286; [1968] 2 All E.R. 686, H.L.(E.).
Faramus v. *Film Artistes Association* [1964] A.C. 925; [1964] 2 W.L.R. 126; [1964] 1 All E.R. 25, H.L.(E.).
Lavarack v. *Woods of Colchester Ltd.* [1967] 1 Q.B. 278; [1966] 3 W.L.R. 706; [1966] 3 All E.R. 683, C.A.
Murphy v. *Stone-Wallwork (Charlton) Ltd.* [1969] 1 W.L.R. 1023; [1969] 2 All E.R. 949, H.L.(E.).
Nagle v. *Feilden* [1966] 2 Q.B. 633; [1966] 2 W.L.R. 1027; [1966] 1 All E.R. 689, C.A.

The following additional cases were cited in argument in the Court of Appeal:

Abbott v. *Sullivan* [1952] 1 K.B. 189; [1952] 1 All E.R. 226, C.A.
Bonsor v. *Musicians' Union* [1954] Ch. 479; [1954] 2 W.L.R. 687; [1954] 1 All E.R. 822, C.A.
Brace v. *Calder* [1895] 2 Q.B. 253.
British Guiana Credit Corporation v. *da Silva* [1965] 1 W.L.R. 248, P.C.
Clayton Greene v. *De Courville* (1920) 36 T.L.R. 790.
Curwen v. *James* [1963] 1 W.L.R. 748; [1963] 2 All E.R. 619, C.A.
Dawkins v. *Antrobus* (1881) 17 Ch.D. 615, C.A.
Jackson v. *Hayes Candy & Co. Ltd.* [1938] 4 All E.R. 587.
Jenkins v. *Richard Thomas & Baldwins Ltd.* [1966] 1 W.L.R. 476; [1966] 2 All E.R. 15, C.A.
Lawlor v. *Union of Post Office Workers* [1965] Ch. 712; [1965] 2 W.L.R. 579; [1965] 1 All E.R. 353.
Lee v. *Showmen's Guild of Great Britain* [1952] 2 Q.B. 329; [1952] 1 All E.R. 1175, C.A.
Martin v. *Amalgamated Society of Painters and Decorators*, The Times, July 10, 1968.
Morgan v. *Fry* [1968] 1 Q.B. 521; [1967] 3 W.L.R. 65; [1967] 2 All E.R. 386.
Padfield v. *Minister of Agriculture, Fisheries & Food* [1968] A.C. 997; [1968] 2 W.L.R. 924; [1968] 1 All E.R. 694, C.A. and H.L.(E.).
Rookes v. *Barnard* [1964] A.C. 1129; [1964] 2 W.L.R. 269; [1964] 1 All E.R. 367, H.L.(E.).
Russell v. *Norfolk (Duke of)* [1949] 1 All E.R. 109, C.A.
Weinberger v. *Inglis* [1919] A.C. 606, H.L.(E.).
Wood v. *Woad* (1874) L.R. 9 Exch. 190.
Yetton v. *Eastwoods Froy Ltd.* [1967] 1 W.L.R. 104; [1966] 3 All E.R. 353.

The following case is referred to in the judgment of Buckley J.:

A *Yetton* v. *Eastwoods Froy Ltd.* [1967] 1 W.L.R. 104; [1966] 3 All E.R. 353.

The following additional case was cited in argument before Buckley J.:

Jackson v. *Hayes Candy & Co. Ltd.* [1938] 4 All E.R. 587.

B APPEAL from Buckley J.

On May 10, 1968, the plaintiff, Beresford Edwards, of Platt Street, Moss Side, Manchester 15, issued a writ against the Society of Graphical and Allied Trades, of Sogat House, London, S.E., and by his amended statement of claim claimed declarations that he was, and at all material times continued to be, a member of the union; that his purported expulsion was C null and void; and alternatively that the refusal to readmit him to membership was improper, wrongful, null and void. He also asked for an injunction to restrain the union from doing any act calculated directly or indirectly to interfere with his prospects of obtaining employment in the printing industry, and for damages. By its defence served on July 3, 1968, the union claimed that as a temporary member the plaintiff knew that he was subject to the general rules of the union which provided, inter alia, D that temporary membership "shall terminate automatically if the member becomes over six weeks in arrears"; admitted that he had paid his weekly contribution until March 27, 1965, but denied that he was requested to permit his weekly contributions to be deducted or that he had given his written consent thereto. The union, after alleging a number of specific complaints against the plaintiff, claimed that on November 13, 1967, the E branch committee had fairly and properly considered the plaintiff's application for readmission and had rejected it on the ground that he had been given a fair and reasonable opportunity to state his case on his first application for readmission before the branch on May 2[illegible], 1966, and on further grounds relating to his conduct after May 2[illegible] 1966. It was denied that he was either victimised or singled out for unfair treatment and it was contended that in so far as he was disabled from being a member of F the union chapel at the firm where he worked he was the author of his own misfortune.

On April 9, 1969, the union admitted that it had been wrong in asserting that the plaintiff was not a member. In the result the only issue on the trial of the action before Buckley J. in November 1969, was the issue of damages.

G

Peter Pain Q.C. and *Anthony Lester* for the plaintiff.
Rodney Bax Q.C. and *M. R. Hickman* for the union.

BUCKLEY J. The plaintiff in this action is a Guyanese gentleman. He is now 39 years of age, he is married and he has four children. He came to this country in 1960, having previously had experience of the printing H trade in Guyana, where his family have, as I understand it, a printing business, in which, from a comparatively early age, he acquired practical knowledge. He obtained employment in this country with a printing business in Manchester called Hugh Stevensons. He acquired that employ-

July 3, 1968, the union put in a defence, saying that his membership had automatically terminated by reason of arrears and that his application for readmission had been properly rejected. A

2. *The incident at Boxmakers*

Nevertheless, although he was not a member of the union, Mr. Edwards sought other work. He went to a firm which did not employ union men. It was a "non-union shop"—Boxmakers Ltd. He started with them on B September 9, 1968, as an assistant. He soon proved himself so capable that he was put onto a Heidelberg cutting-and-creasing-cylinder machine. But he earned less money. Whereas he averaged £29 7s. 9d. a week at Hugh Stevensons, he only averaged £22 a week at Boxmakers.

Six months later, while he was still working for Boxmakers, the union gave up their defence in the action. On April 9, 1969, they agreed that C his purported expulsion from the union was null and void and that he had at all times remained a temporary member of the union. They said they were prepared to submit to declarations to that effect and for damages to be assessed.

Shortly afterwards, however, Mr. Edwards lost his employment at Boxmakers. On May 1, 1969, he came to loggerheads with them. It happened in this way: Mr. Edwards was doing work for which he required D "stillages" (that is, flat pieces of wood on legs) to put the material on. There were none available on the morning of May 1, 1969. The reason was because the labourer who handled them had been away sick for five or six weeks. The firm had ordered more, but they had not arrived. So the foreman asked Mr. Edwards to unstack some so as to make more available. Mr. Edwards said he would not do it. The foreman called the E works manager, Mr Lynch. He explained the difficulties, but Mr. Edwards said: "I won't do it. It's not my job." Later on, after dinner, the works manager asked him again to do it. Mr. Edwards said again: "I won't." The works manager said: "That gives me no alternative but to send you home." Mr. Edwards said: "You can't do that. You will have to sack me." The works manager said: "I don't want to sack you but you F leave me no alternative." So the works manager dismissed him. He gave him one week's pay in lieu of notice. But he gave him a good reference in these words:

> "Mr. Beresford Edwards was in our employ from September 9, 1968, to May 1, 1969. We found him to be honest and a good time-keeper. He was employed on our Heidelberg Department dealing with printing; also cutting and creasing. His work was quite satisfactory." G

Finding himself out of work, Mr. Edwards applied for unemployment benefit; and, after inquiry, the Ministry granted it. Boxmakers told the Ministry, fairly enough, that it was no part of his contract to clear the stillages. So he got his unemployment benefit. But does his conduct count against him in assessing damages?

In point of law Mr. Edwards, I think, was entitled to take the stand he H did. He was asked to do something which was outside his proper work as a skilled man: and he refused. Other skilled men were likewise refusing, he said. But I must say I think he was being very uncooperative. Even though

it was no part of his contract, I should have thought that he might have helped clear the stillages so as to enable the work to proceed. Nevertheless, in assessing damages, I do not think this incident ought to be taken against him. It all flowed from the fact that he had been expelled from the union. Owing to his expulsion, he could only find work in Boxmakers, a non-union shop: and, working there, he had no union to back him up. If Boxmakers had been a union shop and Edwards a member of the union, there is no doubt that Boxmakers would not have dared to dismiss him: because the union would have supported him in his refusal. So it all flowed from his expulsion.

3. *The job at Deans of Stockport Ltd.*

After his dismissal from Boxmakers, Mr. Edwards tried to find work. By this time the union had agreed that he was still a temporary member. He asked them for a temporary membership card, but it was not forthcoming. The union did, however, put forward names of employers who had work to offer. But they turned out to be, not skilled work, but labourer's work: and, quite understandably, he refused, because, if he went to labourer's work, he would find it difficult to get back into skilled work. Then, on August 28, 1969, the union wrote and said that: "A general assistant's job in the letter-press machine department at Deans of Stockport Ltd. is available." Unfortunately, Mr. Edwards did not apply for it. He thought it was a general labourer's job again: and it was 12 miles away from his home. It was, in fact, a Grade III job which might have opened the way to skilled work. The union say he should have gone to see it. I rather think he ought, but, on the whole, I cannot say he was unreasonable. It was the union's mistake which had put him out of work: and they ought to have done everything possible to remedy it. They ought to have made it clear to him that it was a Grade III job.

The action came for trial in the last week of November, 1969. Seeing that the union had admitted that he was still a member, the only issue was damages. Incidentally, he had asked for a temporary membership card, but he did not get it until the second day of the hearing and they made him pay all the arrears from December, 1967. The judge awarded damages of £7,971. The union appeals to this court. On the second day of the hearing, after some comments from the court, the union promised to make him a full member.

4. *The rules*

I must at the outset consider a new point which was raised before us by Mr. Hooson Q.C. He said that Mr. Edwards was only a temporary member and that, under the rules, the branch committee had an unfettered discretion to remove him. Rule 18 (4) (j) says:

> "It is a condition of acceptance of membership that holders of such [temporary] cards must relinquish same immediately upon application by the branch committee responsible for their issue and shall have no claim upon the union or its funds."

Rule 18 (4) (k) says that:

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"Temporary members shall not have any right of appeal from any decision of their branch committee or the executive council." A

Mr. Hooson said that in assessing damages, therefore, it should be assumed that the union would have exercised their power under the rules to remove him: and he should, therefore, recover nothing. At any rate, he should recover nothing after the date of trial because the union would have removed him then. Mr. Hooson relied on the judgment of Diplock L.J. in *Lavarack* v. *Woods of Colchester Ltd.* [1967] 1 Q.B. 278, 294. B

This point was not taken in the court below: and I have had some doubt whether it should be allowed here. But, as it is a point of law, on which no further evidence can help, I think we should consider it. But I desire to say quite clearly that I think that the point is bad, and for this reason. I do not think this trade union, or any other trade union, can give itself by its rules an unfettered discretion to expel a man or to withdraw his membership. The reason lies in the man's right to work. This is now fully recognised by law. It is a right which is of especial importance when a trade union operates a "closed shop" or "100 per cent. membership": for that means that no man can become employed or remain in employment with a firm unless he is a member of the union. If his union card is withdrawn, he has to leave the employment. He is deprived of his livelihood. The courts of this country will not allow so great a power to be exercised arbitrarily or capriciously or with unfair discrimination, neither in the making of rules, nor in the enforcement of them. The law has means at its disposal. A trade union exists to protect the right of each one of its members to earn his living and to take advantage of all that goes with it. It is the very purpose of its being. If the union should assume to make a rule which destroys that right or puts it in jeopardy—or is a wrongful and oppressive interference with it—then the union exceeds its powers. The rule is ultra vires and invalid. Thus if the union should make a rule purporting to give itself uncontrolled discretion to expel a member without hearing him, that rule would be bad. No union can stipulate for a power to expel a man unheard: see *Faramus* v. *Film Artistes Association* [1964] A.C. 925, 947, *per* Lord Pearce. And the union cannot get round it by calling him a "temporary member." A temporary member is just as much a member of the union as a full member. He pays his dues just the same: and he is entitled to equal protection by the law. The union has no right to expel a temporary member arbitrarily any more than it has a right so to expel a full member. To call him a "temporary member" is only a covert way of claiming to exclude him at their discretion: and, as such, it cannot be allowed. C D E F G

I cannot leave the rules there. I think we must consider them further, even on the issue of damages. Mr. Edwards is entitled to damages for being wrongfully excluded from the union. That is now admitted. But why was it wrongful? The measure of damages may depend on the nature of the breach.

The union excluded him by virtue of a rule commonly called the "automatic forfeiture" rule. It is rule 18 (4) (h), which says: "Temporary membership shall terminate automatically if the member becomes over six weeks in arrears" H

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That rule is so positive in its language that I see no way of limiting it, not by way of construction, nor by way of an implied term. Why then does it not apply to this case? I think it is for this simple reason: this rule, like the other, is invalid. It is an unwarranted encroachment on a man's right to work. Just think. A man may fall into arrears without any real fault of his own. It may be due to oversight on his part, or because he is away sick, or on holiday. It may be due, as here, to the union's own fault in not forwarding the "check-off" slip. But, whatever the cause, this rule, if valid, would put it into the power of the union, as soon as a man was six weeks in arrears, either to enforce his exclusion, or to waive it, or to readmit him. They could be as arbitrary or capricious as they pleased. They could discriminate in favour of some and against others as they liked (as indeed Mr. Edwards thought happened to him). They could turn him out of his work without any good or sufficient cause. Such cannot be permitted. It is ultra vires. No union can stipulate for automatic exclusion of a man without giving him the opportunity of being heard: see what Lord Evershed said in the *Farumus* case [1964] A.C. 925 at p. 941.

Next, I would consider Mr. Edwards' application for readmission. Once he was excluded, the union treated his readmission as a matter for their discretion. He applied twice and each time he was refused. Such a refusal may sometimes be justified, as when the trade is oversupplied with labour. But it will not be justified if it is exercised in an arbitrary or capricious manner or with unfair discrimination: see *Nagle* v. *Feilden* [1966] 2 Q.B. 633, 637. In this case, seeing that Mr. Edwards was wrongfully excluded in the first place, it was doubly wrong to refuse him readmission.

5. *The damages*

Such being the wrongful exclusion, how are the damages to be measured? I think they are to be ascertained by putting the plaintiff in as good a position, so far as money can do it, as if he had never been excluded from the union, taking into account, of course, all contingencies which might have led to him losing his employment anyway: and remembering, too, that it was his duty to do what was reasonable to mitigate the damage. Before the judge, too, it was necessary to have regard to the fact that he had by that time been restored to temporary membership. Before us, too, we must remember that he has now been restored to full membership. We are entitled to take this into account, even though it is a matter which has arisen since the trial: see *Murphy* v. *Stone-Wallwork (Charlton) Ltd.* [1969] 1 W.L.R. 1023. It will considerably reduce the damages.

The loss up to the date of trial was as follows:

	£	s.	d.
Actual loss from date when he was dismissed by Stevensons (December 22, 1967) to date of trial (November 18, 1969). The wages he would have earned with Stevensons at £29 7s. 9d. a week	2,700	13	11
Less his earnings with Boxmakers (£22 a week) unemployment benefit and wages in lieu of notice ...	1,489	3	11
	£1.211	10	0

APPENDIX 3A

NAGLE v. FEILDEN AND OTHERS

C. A.

1956
Feb. 3, 4, 22.

LORD DENNING M.R., DANCKWERTS and SALMON L.JJ.

Contract—Formation—Intention to create legal relationship—Issue of training licences by Jockey Club—Repeated refusal to issue licences to woman trainer—Grant of licences to male employees—Whether contract between Jockey Club and woman applicant for licence—Whether refusal of licence because applicant a woman contrary to public policy—Sex Disqualification (Removal) Act, 1919 (9 & 10 *Geo.* 5, *c.* 71), *s.* 1.

Public Policy—Right to work—Trade association with monopoly powers—Refusal of licence by Jockey Club to woman trainer—Whether sex discrimination—Whether contrary to public policy—Sex Disqualification (Removal) Act, 1919 (9 & 10 *Geo.* 5, *c.* 71), *s.* 1.[1]

Restraint of Trade—Trade association—Monopoly powers—Right to work—Jockey Club's refusal of training licence to woman—Whether sex discrimination—Whether contrary to public policy—Sex Disqualification (Removal) Act, 1919, *s.* 1.[1]

Discrimination—Sex—Right to work—Whether woman entitled to train racehorses—Sex Disqualification (Removal) Act, 1919, *s.* 1.

The stewards of the Jockey Club controlled horseracing on the flat throughout Great Britain. They made rules of racing, sanctioned the holding of race meetings and no person was allowed to train horses for racing at their meetings unless he held a licence. The plaintiff, a woman, had trained racehorses for many years. It was the practice of the stewards to refuse to grant a trainer's licence to a woman in any circumstances. The

[1] Sex Disqualification (Removal) Act, 1919, s. 1: "A person shall not be disqualified by sex . . . from the exercise of any public function, or from being appointed to or holding any civil or judicial office or post, or from entering or assuming or carrying on any civil profession or vocation . . ."

C. A. 1966

Nagle v. Feilden

plaintiff had frequently applied for and been refused a trainer's licence, although the stewards had granted licences to men servants employed by her, in particular to her "head lad."

The plaintiff brought an action against the defendants, two stewards on their own behalf and on behalf of the stewards and members of the Jockey Club, claiming, inter alia, a declaration that the practice of the stewards in refusing a trainer's licence to any woman was void as against public policy and an injunction ordering the stewards to grant her a licence. John Stephenson J. affirmed the order of the master striking out the statement of claim and dismissing the action on the defendants' application, which claimed that it disclosed no cause of action. On the plaintiff's appeal:—

Held, allowing the appeal, that, although there was no contractual relationship between the parties, the plaintiff had an arguable case for claiming the relief sought on the ground that the practice of refusing a trainer's licence to a woman might be void as contrary to public policy (post, pp. 644G—645A, 647C-D, 651F, 655C-E).

Ipswich Tailors' Case (1614) 11 Co.Rep. 53a; *Davis* v. *Carew-Pole* [1956] 1 W.L.R. 833; [1956] 2 All E.R. 524; *Weinberger* v. *Inglis* [1919] A.C. 606, 631, 636, 642; 37 T.L.R. 399; and dicta of Lord Pearce in *Faramus* v. *Film Artistes Association* [1964] A.C. 925, 946; [1964] 2 W.L.R. 126; [1964] 1 All E.R. 25, H.L. (E) applied.

Rex v. *The Benchers of Lincoln's Inn* (1825) 4 B. & C. 855 and dicta of Denning L.J. in *Russell* v. *Duke of Norfolk* (1948) 65 T.L.R. 225, 231; [1949] 1 All E.R. 109, C.A. considered.

Per curiam. A man's right to work at his trade or profession is just as important to him as his rights of property. Just as the courts will intervene to protect his rights of property, so they will also intervene to protect his right to work (post, pp. 646E, 650D, 655C-E).

Quaere whether the training of racehorses is a vocation within the meaning of section 1 of the Sex Disqualification (Removal) Act, 1919 (post, pp. 647D, 651E, 656A-D).

Per Danckwerts L.J. The law relating to public policy must change with the passage of time (post, p. 650C).

Per Salmon L.J. One of the principal functions of the courts is, whenever possible, to protect the individual from injustice and oppression (post, p. 654F).

Decision of John Stephenson J. reversed.

APPEAL from John Stephenson J.

The plaintiff, Florence Nagle (femme sole), issued a writ on July 2, 1965, against the defendants, Sir Randle Guy Feilden and the Right Honourable Wentworth Hubert Charles, Viscount Allendale, sued on their own behalf and on behalf of the stewards and all other members of the Jockey Club.

The statement of claim as amended, alleged inter alia, as follows: The defendants had been nominated by the solicitors of the Jockey Club as the defendants to the action. The Jockey Club was a self-electing body which at all material times had been recognised by the custom of the realm as one of the turf authorities of Great Britain. It held itself out as controlling horseracing on the flat in Great Britain. For the purpose of exercising such control the Jockey Club sanctioned the holding of flat race meetings throughout Great Britain and all such meetings and races were subject to the rules issued by them called the Rules of Racing. It was the custom of the realm for such control and for the Rules of Racing to be accepted by all persons concerned in horseracing on the flat. The Rules of Racing provided, inter alia, by rule 17 that the stewards of the Jockey Club had power at their discretion to grant licences to trainers; by rule 66 (B) that no horse should be qualified to run unless he was trained by a licensed trainer; by rule 102 (i) that every trainer in Great Britain must obtain an annual licence. Accordingly, the Jockey Club and their stewards held themselves out as exercising a monopoly in the control of horseracing on the flat in Great Britain and they were under a duty to all persons concerned in horseracing on the flat to exercise such control lawfully and reasonably and in accordance with the Rules of Racing and not to exercise capriciously any discretion vested in them by the rules. Further or alternatively the Jockey Club expressly and/or impliedly offered to prospective applicants that it would through its stewards give consideration in accordance with the Rules of Racing to the granting of training licences. It was an implied term of any such offer that in considering any applications for training licences the stewards would act reasonably and would not exercise capriciously any discretion vested in them by the Rules of Racing. It was and had at all material times been the practice of the stewards to refuse to grant a licence to train racehorses to any female applicant for such licence on the sole ground that such applicant was a female. Such practice constituted a breach of the duty owed and further or alternatively prevented females from earning their living by or from carrying on the trade or business of training racehorses and was unlawful and in restraint of trade and contrary to public policy. At all material times and since about 1938, it had been well known to the stewards that the plaintiff had managed, controlled and carried out all the duties and responsibilities of a trainer in respect of racehorses being trained from about 1938 to about 1942 at Sulhamstead, Reading, in Berkshire and from about 1942 onwards at Westerlanus, Petworth, in Sussex and that such horses had been raced under the Rules of

APPENDIX 4A

A PHARMACEUTICAL SOCIETY OF GREAT BRITAIN AND ANOTHER . . . . APPELLANTS

AND

DICKSON . . . . . RESPONDENT

[ON APPEAL FROM DICKSON *v.* PHARMACEUTICAL SOCIETY OF GREAT BRITAIN]

B

1968 March 18, 19, 20, 21, 25, 26; May 29 — Lord Reid, Lord Morris of Borth-y-Gest, Lord Hodson, Lord Upjohn and Lord Wilberforce

Corporation — Powers — Professional body — Whether member entitled to test validity of proposed rule of professional conduct.

C *Restraint of Trade — Professional body — Pharmacists — Use of powers to restrict trade activities of members—Non-contractual relationship—Whether involuntary restraint of trade—Whether member entitled to relief—Whether a restraint of trade contrary to public policy outside powers of controlling body.*

A society incorporated by Royal Charter and recognised by statute as representing the profession of registered pharmacists had among its objects that of maintaining the honour and safeguarding and promoting the interests of the members "in their exercise of the profession of pharmacy." All registered pharmacists were required to be members, and limited companies employing registered pharmacists and carrying on chemists' businesses in premises registered under the Pharmacy Acts were also thereby brought within the society's jurisdiction. The society's governing body was a council with power to make by-laws in furtherance of the objects. Its disciplinary body was an independent statutory committee which could inquire into charges of misconduct against a member and strike off the register a particular pharmacist or company premises. In considering misconduct the statutory committee had regard to the code of ethics laid down by the society for guidance on professional conduct. The code of ethics, though said to be binding only in honour, had practical force and normally 90 per cent. of the membership complied with its provisions. There was a right of appeal from the statutory committee to the High Court.

The society, being concerned at the extension of the range of non-pharmaceutical goods sold in chemists' shops and the effect which it might have on the quality and status of the profession, proposed a new rule for inclusion in the code of ethics and submitted it in the form of a motion to a specially convened meeting of the members. The effect of the rule would be that, save with the approval of the council, new pharmacies would have to be situated in physically distinct premises and their trading activities confined to pharmaceutical and traditional goods as defined in the report of a committee on the general practice of pharmacy; and existing pharmacies would not, without the council's approval, be able to extend their present range of non-traditional goods. At the meeting, which was attended by some 6,000 of the society's 29,000 members, the motion was passed by a majority of 3,690.

The respondent, a member of the society, brought an action for a declaration that the motion, if implemented, would be

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ultra vires the society's objects and in unreasonable restraint of trade, and therefore would be contrary to public policy; and he asked also for an injunction to restrain the society from enforcing it. The society claimed that the motion was intra vires; that a dispute as to a rule of professional conduct binding only in honour was not justiciable in the courts save on appeal from the disciplinary committee; and that as the doctrine of restraint of trade did not apply to rules of professional conduct, the issue whether it was reasonable in the interests of the parties did not arise; but evidence was given to justify the proposed restraint.

Pennycuick J. granted the relief sought. The Court of Appeal affirmed that decision.

On appeal by the society and its president to the House of Lords:—

Held, dismissing the appeal (1) that the respondent as a member of the society was entitled to test in the courts the validity of a proposed rule of professional conduct and to ask for an injunction to restrain enforcement of the rule if it were held to be outside the express objects of the society; a fortiori where the alternative procedure by way of appeal from a finding of the statutory committee might leave the whole profession in doubt for an indeterminate period about the permitted scope of the trading activities by which they lived (post, pp. 420D–E, 426A–F, 429F–430B, 433D–434C, 437E–438B).

(2) That the restrictions proposed in the rule went outside the expressed objects of the society in a profession whose members had always engaged in trade, and that they were unreasonable in the interests of the members unless (*per* Lord Morris of Borth-y-Gest, Lord Hodson and Lord Upjohn) the society could prove that they were justified, which, it had declined to do (post, pp. 421D, 426G–427C, 430F–431B, 434C–435G).

Per Lord Reid. *Quaere* whether a professional body must plead and prove justification where restraints exist as part of a code of professional conduct (post, p. 421B).

(3) That the restrictions were in restraint of trade and contrary to the public interest (post, pp. 427D–H, 435G–436A, 437C–D, 440B–H).

Gunmakers, etc. (*Master, etc.*) v. *Fell* (1742) Willes 384 applied.

Jenkin v. *Pharmaceutical Society of Great Britain* [1921] 1 Ch. 392 considered.

Decision of the Court of Appeal [1967] Ch. 708; [1967] 2 W.L.R. 716; [1967] 2 All E.R. 558, C.A. affirmed.

The following cases are referred to in their Lordships' opinions:

Attorney-General of the Commonwealth of Australia v. *Adelaide Steamship Co. Ltd.* [1913] A.C. 781, P.C.

Boulting v. *Association of Cinematograph, Television and Allied Technicians* [1963] 2 Q.B. 606; [1963] 2 W.L.R. 529; [1963] 1 All E.R. 716, C.A.

City of London Case (1610) 8 Co.Rep. 121b.

Dyson v. *Attorney-General* [1911] 1 K.B. 410, C.A.

Eastham v. *Newcastle United Football Club* [1964] Ch. 413; [1963] 3 W.L.R. 574; [1963] 3 All E.R. 139.

Esso Petroleum Co. Ltd. v. *Harper's Garage (Stourport) Ltd.* [1968] A.C. 269; [1967] 2 W.L.R. 871; [1967] 1 All E.R. 699, H.L.(E.).

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Gunmakers, etc. (Master, etc.) v. *Fell* (1742) Willes 384.
Hughes v. *Architects' Registration Council of the United Kingdom* [1957] 2 Q.B. 550; [1957] 3 W.L.R. 119; [1957] 2 All E.R. 436, D.C.
Ipswich Tailors' Case (1614) 11 Co.Rep. 53a.
Jenkin v. *Pharmaceutical Society of Great Britain* [1921] 1 Ch. 392.
McEllistrim v. *Ballymacelligott Co-operative Agricultural and Dairy Society Ltd.* [1919] A.C. 548, H.L.(I.).
Mitchel v. *Reynolds* (1711) 1 P.Wms. 181.
Nagle v. *Feilden* [1966] 2 Q.B. 633; [1966] 2 W.L.R. 1027; [1966] 1 All E.R. 689, C.A.
Nordenfelt v. *Maxim Nordenfelt Guns and Ammunition Co. Ltd.* [1894] A.C. 535, H.L.(E.).
Rossi v. *Edinburgh Corporation* [1905] A.C. 21, H.L.(Sc.).
Standard Oil Co. of New Jersey v. *United States* [1951] 2 Lloyd's Rep. 36.
Swaine v. *Wilson* (1889) 24 Q.B.D. 252, C.A.

The following additional cases were cited in argument:

Attorney-General v. *Manchester Corporation* [1893] 2 Ch. 87.
Attorney-General v. *Nottingham Corporation* [1904] 1 Ch. 673.
Clark v. *Le Cren* (1829) 9 B. & C. 52.
Claygate v. *Batchelor* (1601–2) Owen 143.
Cooke v. *Turner* (1846) 15 M. & W. 727.
Cox v. *Green* [1966] Ch. 216; [1966] 2 W.L.R. 369; [1966] 1 All E.R. 268.
Daily Mirror Newspapers Ltd. v. *Gardner* [1968] 2 Q.B. 762; [1968] 2 W.L.R. 1239; [1968] 2 All E.R. 163, C.A.
Darcy v. *Allein* (*Case of Monopolies*) (1602) 11 Co.Rep. 84b.
Davenant v. *Hurdis* (1598) Moore K.B. 576.
Egerton v. *Brownlow* (1853) 4 H.L.Cas. 1, H.L.
Lawson, In re (1941) 57 T.L.R. 315, D.C.
Litchfield-Speer v. *Queen Anne's Gate Syndicate* (*No. 2*), *Ltd.* [1919] 1 Ch. 407.
Lloyd v. *Institute of Chartered Accountants*, October 11, 1961 (unreported).
London Association of Shipowners and Brokers v. *London and India Docks Joint Committee* [1892] 3 Ch. 242, C.A.
Nicholls v. *Tavistock Urban Council* [1923] 2 Ch. 18.
Permanent Trustee v. *Dougal* [1934] N.S.W.R. 83 (Australia).
Sim v. *Pharmaceutical Society of Great Britain*, January 26, 1962 (unreported).
Thompson v. *British Medical Association* (*New South Wales Branch*) [1924] A.C. 764, P.C.

APPEAL from the Court of Appeal.

This was an appeal from an order of the Court of Appeal (Lord Denning M.R., Danckwerts and Sachs L.JJ.) dated January 26, 1967, affirming an order of Pennycuick J., dated June 23, 1966, in favour of the respondent, Robert Campbell Miller Dickson, whereby it was declared that it was not within the powers, purposes or objects of the appellant society, the Pharmaceutical Society of Great Britain, to enforce or carry out or attempt to enforce or carry out the provisions of a motion passed by a general meeting of the society on July 25, 1965, on the ground that the said provisions were in restraint of trade and whereby the society and the second appellant, James Cecil Bloomfield, were restrained by injunction in terms correspond-

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